



Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5 -40
Regulation title	Requirements for Product Approval
Action title	Label Approval Revisions
Document preparation date	September 12, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed amendments remove certification and chemical analysis requirements for new beer and wine products proposed for sale in Virginia, and allow the use of resealable "growlers" for the sale of beer in all on- and off- premises beer retail establishments. The current regulation requires the submission to the Board of a certification or a sample for analysis for all wine and beer products prior to their sale in Virginia. Since the formulation of all products approved for sale in the United States is approved by the federal Bureau of Alcohol, Tobacco and Firearms, the Board considered and chose to adopt the alternative of relying on the federal approval rather than requiring a separate analysis for the purposes of the Commonwealth. Growlers are currently only allowed for use by brewpubs.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 4.1-103, subsection 9, of the Code of Virginia, authorizes the Alcoholic Beverage Control Board to "determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon." Section 4.1-111 authorizes the Board to promulgate reasonable regulations which it deems necessary to carry out the provisions of Title 4.1.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The goals of this regulation are:

1. To determine the nature, form and capacity of all containers used for holding alcoholic beverages, and prescribe the form and content of all labels and seals to be placed thereon.
2. To protect consumers of alcoholic beverages from misleading information concerning the identity or contents of alcoholic beverage products sold in the Commonwealth.

The regulation is effective in achieving the goals. It is essential to protect the health, safety or welfare of citizens, in that it ensures that alcoholic beverage packaging accurately reflects the contents, does not contain misleading information, and does not include obscene matter or representations intended or tending to promote overconsumption of alcoholic beverages. This action will remove unnecessary requirements and streamline the process of product approval, as well as provide additional container options for on-and off-premises beer licensees and their customers.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

In 3 VAC 5-40-20, the requirement for certification or analysis of wine products will be removed;

In 3 VAC 5-40-40, the use of growlers will be extended to all licensees with the privilege of selling beer for on-and off-premises consumption;

In 3 VAC 5-40-50, the requirement for certification or analysis of beer products will be removed, and the provision of subsection D.8. referring to the depiction of any athlete, former athlete or athletic team on beer labels will be modified to allow such depictions to the extent they are permitted in point-of-sale advertising under 3 VAC 5-20-10.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantages of this action are to manufacturers, wholesalers, and retailers of wine and beer products. The removal of certification and analysis requirements will reduce the potential impediments to getting their new products to market. There are no disadvantages to the public or the Commonwealth, since federal registration requirements capture matters formerly obtained by the state analysis. Beer on- and off-premises retailers and their customers will also obtain the advantage of the option of using growlers, resealable containers, to sell beer not ordinarily available in bottles or cans.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There will be no additional cost to the state to implement and enforce the proposed regulation.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Alcoholic beverage manufacturers, wholesalers, and retailers
Agency’s best estimate of the number of such entities that will be affected	Approximately 14,000
Projected cost of the regulation for affected individuals, businesses, or other entities	None

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Alternatives to the current proposal considered included making no change to the current regulation and eliminating the state product approval process altogether. Current regulations contain certification and analysis provisions which are duplicative and unnecessary, since access to federal filings of the same information is available. The approval process should not be scrapped in its entirety, however, since there is a variation between state and federal alcohol content and label content rules.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Virginia Hospitality & Travel Association	VHTA endorses, conceptually, the Board's action.	

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory change will have no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
5-40-20		Certification or analysis of new wine products must be submitted.	No certification or analysis required. Chemical analysis not used or needed by Virginia ABC. Federal filing information is

5-40-40		Growlers may only be used by brewpubs.	available. Growlers may be used by any on-and off-premises beer retailer. No policy reason for current distinction.
5-40-50		Certification or analysis of new beer products must be submitted.	No certification or analysis required. Chemical analysis not used or needed by Virginia ABC. Federal filing information is available.

Enter any other statement here